



C.M.A(MD)No.899 of 2015

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BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: **24.04.2023**

CORAM

THE HON'BLE MR.JUSTICE R.VIJAYAKUMAR

C.M.A(MD)No.899 of 2015

National Insurance Company Limited,
Through its Branch Manager,
Door No.333/1, Checkalai Road,
Karaikudi Town,
Sivagangai District.

... Appellant/3rd Respondent

Vs.

1.T.Pandeeswari

2.T.Nithya

3.Minor.T.Boopalan

4.Minor.T.Jegan Rajan

... Respondents/Petitioners

5.K.Ramachandran

6.M.Muthuramalingam

... Respondents/Respondents 1&2

PRAYER: Civil Miscellaneous Appeal is filed under Section 173 of Motor Vehicles Act, to set aside the order of the Claims Tribunal in M.C.O.P.No.205 of 2010, dated 11.11.2013 on the file of the Motor Accident Claims Tribunal, District Court, Sivagangai.

For Appellant : Mr.J.S.Murali

For R1-R4 : Mr.A.Shajahan



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For R5 : No Appearance

For R6 : Mr.S.Parthasarathi

JUDGMENT

The present appeal has been filed by the insurance company challenging the award passed by the Motor Accident Claims Tribunal, Sivagangai in M.C.O.P.No.205 of 2010 on the ground of liability and quantum.

2. According to the claimants, the deceased was travelling as a pillion rider in a two wheeler driven by one K.Ramachandran who is arrayed as the 1st respondent in the claim petition. The said 2 wheeler was owned by the 2nd respondent in the claim petition, namely M.Muthuramalingam. The vehicle was insured with the appellant insurance company. According to the claimants, when the driver of the 2 wheeler had driven the vehicle in a rash and negligent manner and applied brake suddenly, the deceased was thrown away from the vehicle and he sustained grievous injuries he passed away.

3. According to the claimants, he was a ward member in

<https://www.mhc.tn.gov.in/> Minnamadurai Town Panchayat and he was also doing real estate



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business and contract business. Therefore, according to the claimants, he was earning a sum of Rs.25,000/- per month and therefore, prayed for a sum of Rs.10,00,000/- towards compensation.

4. The driver and the owner of the vehicle had remained ex parte. The insurance company had filed a counter contending that the driver of the two wheeler was not holding any driving license at the relevant point of time and they are not liable to pay any compensation. The insurance company further challenged the quantum of the award that was prayed for in the claim petition.

5. The tribunal after considering the oral and documentary evidence, arrived at a finding that the accident has happened only due to the rash and negligent driving of the driver of the two wheeler. The tribunal further found that the driver of the two wheeler did not have any driving license at the relevant point of time and held that the insurance company is liable to satisfy the award and thereafter, they can recover the same from the owner of the two wheeler.

6. The tribunal further found that the deceased was aged 44 years and his notional monthly income was fixed at Rs.6,000/- per month.

<https://www.mhc.tn.gov.in/judis>

After taking into consideration the future prospects, the loss of income



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was arrived at Rs.72,000/- and after deducting 1/4th, the annual income would be at Rs.54,000/-. After applying multiplier of 14, The total loss of income was arrived at Rs.7,56,000/-. A sum of Rs.20,000/- was awarded towards loss of love and affection and another sum of Rs.15,000/- was awarded towards loss of consortium to the wife of the deceased. A sum of Rs.5,000/- was awarded towards funeral expenses and another sum of Rs.4,000/- was awarded towards loss of estate, totally a sum of Rs.8,00,000/- was awarded as compensation. The tribunal has directed the insurance company to pay the award and recover the same from the 2nd respondent in the claim petition. This award is under challenge in the present appeal.

7. According to the learned counsel appearing for the appellant, the driver of the vehicle was not having a driving license at the relevant point of time and therefore, the tribunal was not right in ordering pay and recovery. The tribunal ought to have exonerated the insurance company. He further contended that the claimants have not produced any document to establish the fact that the deceased was doing any contract business or doing real estate business. Therefore, fixing the notional income at Rs.3,000/- and adding 50% of future prospects and arriving at a monthly income of Rs.6,000/- is not legally sustainable. Hence, he prayed for allowing the appeal.



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8. Per contra, the learned counsel appearing for the respondent had contended that the deceased was not only a ward member but he was also doing real estate business and doing contract business. Therefore, the notional monthly income of Rs.3,000/- can never be considered to be excessive. Hence, he prayed for confirmation of the award passed by the tribunal.

9. I have carefully considered the submissions made on either side.

10. The primary contention of the learned counsel appearing for the appellant insurance company is that the driver of the two wheeler was not holding any driving license at the relevant point of time and therefore, the order of pay and recovery is not maintainable. However, this Court is not inclined to accept the said submission in view of the judgments of the Hon'ble Supreme Court to the effect that where there is violation of policy condition, the insurance company is to satisfy the award and thereafter, recover the same from the owner of the vehicle. Since the tribunal has already passed an order of pay and recovery, this Court is not inclined to interfere in the said portion of the award.

11. As far as quantum is concerned, the monthly income taken at Rs.6,000/- per month for a ward member who is said to be doing real



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estate and contract business, can never be considered to be excessive or unreasonable. That apart, the tribunal has applied the correct multiplier and deducted 1/4th towards personal expenses. This Court does not find any reason to interfere in the award of Rs.7,56,000/- which was awarded towards loss of income. Under the other heads, this Court does not find any reason to interfere and they have been correctly awarded.

12. In view of the above said facts, this Court does not find any merits in the appeal. The award passed by the tribunal stands confirmed. As far as pay and recovery is concerned, the tribunal is directed to follow the judgment in **2004 (1) TN MAC (SC) 211 (Oriental Insurance Co.Ltd., Vs. Shri Nanjappan & Others).**

13. With the above said observations, this Civil Miscellaneous Appeal stands disposed of. No costs.

24.04.2023

NCC : Yes / No
Index : Yes / No
Internet : Yes / No
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To

- 1.The Motor Accident Claims Tribunal,
District Court,
Sivagangai.
- 2.The Section Officer,
Vernacular Section,
Madurai Bench of Madras High Court,
Madurai.



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R.VIJAYAKUMAR,J.

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Judgment made in
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